

UNITED STATES PATENT AND TRADEMARK OFFICE

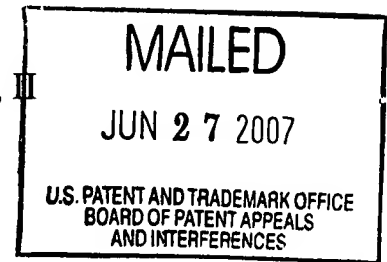
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT RAYMOND MILLER, III  
and  
MATTHEW J. SHERMAN

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Application No. 09/989,779

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on June 11, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

**Examiner's Answer**

On August 24, 2005, Appellants filed an Appeal Brief. On May 22, 2006, the Examiner entered an Examiner's Answer in response to Appellants' Brief. A review of the Examiner's Answer reveals that the Answer is defective for a number

of reasons which are discussed herein. First, the Examiner's Answer does not contain the required heading of "Real Party in Interest," as required by the Manual of Patent Examining Procedure (MPEP) § 1207 (8th ed., Rev. 3, August 2005). Second, on page 2, section (8) under the heading of "Evidence Relied Upon," the Examiner states that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal." However, a review of the Answer reveals that the examiner relies upon references to Suzuki (US 005787122A), Aaronson (US006363062B1), Ohashi, Khayrallah (XP-000889044), and Struhsaker (US 20020141355A1). MPEP § 1207.02 (8th ed., Rev. 3, August 2005) clearly states:

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, submitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Finally, on pages 2 and 3 of the Answer, section (9) under the heading of "Grounds of Rejection," the Examiner does explicitly state each ground of rejection on appeal, nor does the Examiner identify the references relied upon in his Grounds of Rejection.


Accordingly, it is

ORDERED that the application is returned to the Examiner to vacate the Examiner's Answer filed on May 22, 2006, to submit a corrected Examiner's Answer properly identifying the "Real Party in Interest" and the "Evidence Relied

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Upon” in accordance with MPEP § 1207, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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